

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NEW)	
CINGULAR WIRELESS PCS, LLC, D/B/A AT&T)	
MOBILITY AND TILLMAN INFRASTRUCTURE)	
LLC FOR ISSUANCE OF A CERTIFICATE OF)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY TO)	2024-00284
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF GRAYSON)	

ORDER

On October 18, 2021, New Cingular Wireless PCS, LLC d/b/a AT&T Wireless (AT&T) and Tillman Infrastructure LLC,(Tillman) (jointly, Co-Applicants) filed an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility in Case No. 2021-00398.¹ The Co-Applicants originally proposed a tower height was a 145-foot tall tower, with an approximately 4-foot tall lightning arrestor attached at the top, for a total height of 149-feet.² On February 24, 2022, the Commission granted a motion to intervene filed by home owners (the Intervenor or the Nicolais) residing near the proposed tower.³ The Intervenor objected to the tower height and location relative to the potential impact on

¹ Case No. 2021-00398, *Electronic Application of New Cingular Wireless PCS, LLC d/b/a ATT Mobility for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Grayson* (Ky. PSC Oct. 25, 2021), PSC No Deficiency Letter.

² Case No. 2021-00398, Oct. 18, 2021 Application at 3.

³ Case No. 2021-00398, (Ky. PSC Feb. 24, 2022), Order at 3.

their property value.⁴ The Commission held a hearing on July 27, 2023, and an Informal Conference held on August 28, 2023. Based on the hearing and informal conference, the Co-Applicants revised the height and location of the proposed tower in their application refiled on November 20, 2024.⁵ The revised proposed facility consists of a reduced tower height not to exceed 111-feet, with attached antennas etc.,⁶ to be located 2589 Blue Bird Road, Falls of Rough, Grayson County, Kentucky 40119. The coordinates for the revised proposed facility are North Latitude 37° 35' 46.17" by West Longitude 86° 29' 26.44", approximately 240 feet further from the Intervenor's residence than the original site location.⁷ The record in Case No. 2021-00398 was incorporated in Case No. 2024-00284, and the Nicolais were granted intervention in this matter as well.⁸ The Nicolais responded to one request for information⁹ and the Co-Applicants responded to one request for information.¹⁰ The Nicolais also filed testimony on January 31, 2025. On March 5, 2025, the Co-Applicants requested a decision on the record, and the Nicolais did not file a request for hearing or a request for a decision on the record.

Pursuant to 807 KAR 5:063, Co-Applicants has filed statements of having provided the required notifications regarding the proposed construction.¹¹ Pursuant to 807 KAR

⁴ Case No, 2021-00398, Feb. 28, 2023 Roger and Janelle Nicolai Response.

⁵ PSC No Deficiency Letter (issued Nov. 22, 2024); Order (Ky. PSC Apr. 12, 2024) the Commission dismissed Case No. 2021-00398 without prejudice.

⁶ 38 feet shorter than the original proposed tower.

⁷ Application (filed Nov. 20, 2024) at 2 and 9.

⁸ Order (Ky. PSC Jan. 7, 2025) at 4.

⁹, Co-Applicant's Response to Nicolais' Request for Information (filed Jan. 22, 2025).

¹⁰ Nicolais' Response to Co-Applicants Request for Information (filed Feb. 21, 2025).

¹¹ Application at 7.

5:063, Co-Applicants has filed evidence that the county judge/executive¹² and all property owners within 500 feet and contiguous to the cell site have been notified of the proposed construction.¹³ The notices solicited any comments and informed the recipients of their right to request intervention.¹⁴ As of the date of this Order, no additional requests for intervention have been received. There have been several public comments filed in support of the Nicolais.¹⁵

Co-Applicants filed applications with the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) seeking approval for the construction and operation of the proposed facility. Both applications have been approved.¹⁶

Co-Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.¹⁷ Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a licensed professional engineer has certified the plans.

Co-Applicants have provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.¹⁸ Co-Applicants have also provided information that there is no reasonable

¹² Application, Exhibit L.

¹³ Application, Exhibit J and Exhibit K.

¹⁴ Application, Exhibit K.

¹⁵ PSC Response E-Mail to Multiple Comments (filed Jan. 2, 2025).

¹⁶ Application, Exhibit E.

¹⁷ Application, Exhibit B and Exhibit C.

¹⁸ Application, Exhibit N; Supplemental 2024 Radio Frequency Engineering Statement in Support of Application for Certificate of Public Convenience and Necessity (filed Dec. 12, 2024).

opportunity to co-locate its equipment on existing structures.¹⁹ The Intervenors proposed an alternative site and have filed information alleging the economic impact to property value.²⁰

To obtain a CPCN, Co-Applicants must demonstrate a need for such facilities and an absence of wasteful duplication.²¹

“Need” requires “a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.”²² “Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”²³ The wireless market is competitive and, other than the placement of towers and interconnection with other telecommunications providers, the Commission has little jurisdiction over wireless providers, including no jurisdiction over the rates and earnings of a wireless provider.²⁴ While the Intervenors arguments may in fact be valid, the Commission is limited to the statutory elements of a CPCN.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Co-Applicants have demonstrated that there is a need for the proposed facility as a result of increasing demand for telecommunications services, to

¹⁹ Application at 5.

²⁰ Case No. 2021-00398, Mar. 15, 2022 Roger and Janelle Nicolai Response to Public Hearing.

²¹ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885 (Ky. 1952).

²² *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

²³ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

²⁴ See KRS 278.54611.

assure adequate coverage in the area, and to improve service in Grayson County by providing a more cohesive network.

The Commission also finds that the proposed facility will not result in wasteful duplication. Building a new tower to improve telecommunication services and assure adequate coverage when there are no reasonable opportunities to co-locate the equipment required to do so is not wasteful duplication. The Co-Applicants explored various alternatives and have proposed to move the tower as well as reduce the height and change the structure to a monopole. Therefore, the Commission, based on the above facts, finds that a CPCN to construct the proposed facility should be granted.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, Co-Applicants shall notify the Commission if the antenna tower is not used to provide service in the manner set out in the application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which shall be observed by Co-Applicants.

IT IS THEREFORE ORDERED that:

1. Co-Applicants are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 111-feet in height, with attached antennas, to be located 2589 Blue Bird Road, Grayson

County, Kentucky 40119. The coordinates for the proposed facility are North Latitude 37° 35' 46.17" by West Longitude 86° 29' 26.44".

2. Co-Applicants shall immediately notify the Commission in writing if, after the antenna tower is built and utility service is commenced, the tower is not used for three consecutive months in the manner authorized by this Order.

3. Documents filed, if any, in the future pursuant to ordering paragraph 2 herein shall reference this case number and shall be retained in the post-case correspondence file.

4. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:


Executive Director



Case No. 2024-00284

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